

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2017

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P.No.13737 of 2017

and

W.M.P.Nos.14921 and 14922 of 2017

S.K.Logesh Kumar, (Minor),
Rep. By Father - Natural Guardian
Dr.M.Saravana Kumar.

... Petitioner

Vs.

1. The Principal
SAINIK School,
Amaravathi Nagar, Udumalpet - Taluk,
Tirupur-District - 642 102.

2. The President, Medical Board,
Command Hospital, Southern Command,
Wanowire, Pune - 411 040.

... Respondents

Prayer:

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, order, direction of like nature under Article 226 of the Constitution of India and call for the records relating to the impugned orders dated 18.04.2017 and of 02.05.2017 with reference No-401/7/MB/Student/2017 on the file of the 2nd Respondent forwarded to and now available on the files of 1st Respondent refusing/repudiating the petitioner the Admission in Sainik School, Amaravathi Nagar - 642 102 as rife with infirmities, error in law apparent on the face of record and illegal and quash the same and direct the 1st Respondent to admit the petitioner in VI-class for the year 2017-18 course.

For petitioner : Mr.K.S.Narayanan

For Respondents : Mr.Su.Srinivasan,
Assistant Solicitor General

O R D E R

A Sainik school is not like a normal regular school and it is being administrated by the Army wherein equal importance is being given for physical education as well as for academic excellence.

2. In normal schools, ordinarily, the physical education is being ignored deliberately and academic side alone is looked into very seriously. The first respondent is a Sainik school and for admission into Sainik schools, through out India, there would be a school-wise entrance examination. In the written examination conducted by the first respondent, the petitioner's son was found to be eligible and those who have been declared eligible are subjected to physical fitness test as health and physical fitness of the students is important in the school run by the Army. Moreover, after successful completion of the school, there is a possibility of getting selected in the army. When such is the position, physical fitness and health of the students, who are to be admitted in the school are very important. Even according to the respondent, the programme for every day in the school is given as follows:

- (a) Morning Physical Training/exercises : 0600 hrs to 0645 hrs
- (b) Evening Games : 1600 hrs to 1700 hrs
- (c) NCC parades/Drill : Two days in a week
- (d) Swimming /Horse Riding Class : Once in a week

Apart from the above regular activities, cross country race/canoe/week end Hikes are also organized and the entire School boys would participate in all the activities. The above information are necessarily to be taken into consideration while deciding the claim of the petitioner in the above writ petition.

3. The petitioner's son applied for admission to VI-class in the first respondent school and he successfully went through the examination conducted by the first respondent. Thereafter, he was sent for medical fitness test to the Madras Military hospital, Chennai, on 08.03.2017. The Doctors examined the petitioner's son and found that he was suffering from "Knock knee". The decision has been given on 13.03.2017 by the first respondent declaring his status as "medically unfit". Against the said decision, the petitioner preferred a review/appeal to the review Medical Board at Pune, namely, Command Hospital (SC), Pune. After taking X-rays, again the medical fitness of the petitioner's son was reviewed. The Pune Medical Board had also

confirmed the view of the Madras Doctor's decision on 18.04.2017. Based on the said decision, the petitioner's son has been denied admission, which made the petitioner to come before this court.

4. Heard Mr. K.S.Narayanan, learned counsel appearing for the petitioner and Mr.Su.Srinivasan learned Assistant Solicitor General, appearing for the respondents.

5. Learned counsel for the petitioner would submit that no written order has been issued, giving the details of the medical condition of the petitioner's son, both by the Madras hospital as well as by the Command Hospital at Pune. On the other hand, the petitioner has procured a medical certificate from one Dr.Major K. kamal on 25.5.2017 whose opinion is " No evidence of knock knee (Genu valgum) on both sides, both clinically and radiologically". Relying upon the private doctor's opinion, learned counsel for the petitioner would submit that a qualified, experienced, orthopaedic surgeon has been consulted and he has given opinion in favour of the petitioner's son. Therefore, based on that opinion, the petitioner's son should be admitted in the school. As an alternate argument, he would submit that, atleast the petitioner's son could be sent back for re-examination by the respondent so that he could have one more chance.

6. On the other hand, Mr.Su.Srinivasan, learned Assistant Solicitor General, would submit that the petitioner's son was examined radiologically and clinically by expert Doctors both at Chennai as well as at Pune. When both the doctors have uniformly confirmed the status of the petitioner's son, there cannot be any further review or appeal, he would submit. Hence, he seeks dismissal of the writ petition.

7. Heard the parties and perused the records very carefully.

8.As observed in the opening paragraph, the school is a special school where physical fitness is essential and mandatory and that is the reason why the successful candidates in the entrance examination are being sent to medical examination for physical fitness. A Total of 266 candidates, who successfully cleared entrance examination for admission to class VI and class IX for the year 2016-2017 have been referred to Military hospital, Chennai for medical examination and 90 candidates were declared unfit for various reasons. A chance was given for reviewing the opinion, at Command hospital, Pune. Out of 32 cases of "Knock knee" referred to Command hospital, Pune, 21 were declared fit and 11 were declared unfit which included the petitioner's son.

9. The experience and the expertise knowledge possessed by the doctors in the Army is something different when compared to the doctors, who are treating patients in normal course. The doctors in the Army are trained and have got experience to diagnose the disease, which may affect the physical fitness of the students at a later point of time. When Doctors of 2 hospitals have given a consistent view, relying upon a private opinion, this Court cannot direct, either to re-consider the decision taken or to direct the school to admit the petitioner's son. It is not as if the petitioner's son was not given one more chance. The petitioner's son was examined at Chennai and thereafter at Pune also. He was sent for x-ray investigation of both knees on the same day. The doctors, after examining the x-ray as well as examining the petitioner's son clinically were unanimously of the opinion that "knock knee" is noted clinically and not based on x-ray.

10. Though it is submitted that no report has been submitted or order has been given, while declaring the petitioner's son unfit, the respondents are only verifying the medical fitness for admission in the school and not for employment. Further two doctors are of the unanimous opinion that the petitioner's son is suffering from "knock knee" that too based on x-rays report and examining the petitioner clinically and more over, the RTI information received by the petitioner on 02.05.2017 would reveal that the condition of the petitioner's son was reviewed by a senior medical surgeon of the Pune hospital in an unbiased manner both clinically and also considering the x-rays.

11. There is no malafides alleged against any of the doctors or the respondents. Moreover, there is no necessity for the respondents to have any adverse interest against the petitioner's son.

12. Regarding one more chance for review of the physical fitness of the petitioner's son, it is not automatic and the petitioner was already provided a chance of review at Command Hospital at Pune. There should be an end for any claim. As already stated, the first respondent school is a special school where physical fitness is important. When the doctors have given opinion that the petitioner's son is suffering from knock knee, this Court cannot act as an expert body as if it is deciding the matter in appeal. The expert's opinion has to be given importance and the same cannot be substituted by an opinion given by this Court.

13. For all the reasons stated above, the claim made by the petitioner cannot be sustained. It is not a fit case for exercising jurisdiction under Article 226 of the constitution.

Hence the writ petition fails and the same is dismissed. No costs. Consequently connected Miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sli/nmm

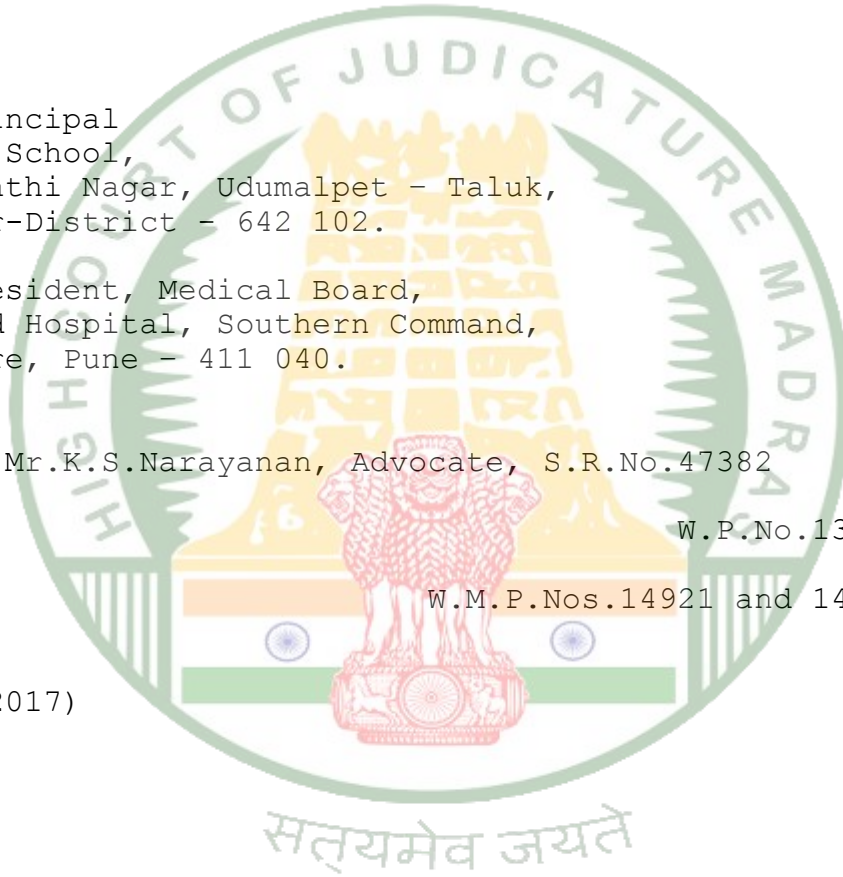
To

1. The Principal
SAINIK School,
Amaravathi Nagar, Udumalpet - Taluk,
Tirupur-District - 642 102.
2. The President, Medical Board,
Command Hospital, Southern Command,
Wanowire, Pune - 411 040.

+2cc's to Mr.K.S.Narayanan, Advocate, S.R.No.47382

W.P.No.13737 of 2017
and
W.M.P.Nos.14921 and 14922 of 2017

KJ(CO)
CA(11/08/2017)



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